SUPREME COURT, U.S.
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IN THE

Supreme Court of the United States

October Term, 1970

No. 1082

FIELDS PRODUCTIONS, INC.,

Petitioner,

v.

UNITED ARTISTS CORPORATION,

Respondent.

PETITIONER'S SUPPLEMENTAL BRIEF

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February 11, 1971

IN THE

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No. 1662

FIELDS PRODUCTIONS, INC.,

Petitioner,

v.

UNITED ARTISTS CORPORATION,

Respondent.

PETITIONER'S SUPPLEMENTAL BRIEF

This brief is submitted to appraise the Court that after the filing of Fields' petition for certiorari and before the filing of United Artists' brief in opposition, the Ninth Circuit, on rehearing, modified its opinion in *Mulvey* v. *Samuel Goldwyn Productions* (petition, pp. 8-11) to add the following footnote:

> "We disagree with the contrary conclusion on the standing issue reached by the Second Circuit, per curiam, in Fields Productions, Inc. v. United Artists Corp. (1970) 432 F.2d 1010."

The opinion, as so modified, appears in the January 18, 1971 advance sheet, 433 F.2d 1073, 1076, and is not referred to in the opposing brief which was filed on February 3, 1971.

The Ninth Circuit has thus explicitly recognized the sharp conflict between itself and the Second Circuit over the proper application of Section 4 of the Clayton Act, 15 U.S.C. §15, asserted in the petition and disputed by United Artists, which now requires resolution by this Court.

One other recent decision, which appeared in the CCH Trade Regulation Reporter on January 25, 1971, demonstrated that the conflict is not limited in its significance and effect to the motion picture industry, as United Artists claims. *Wilson* v. *Ringsby Truck Lines Inc.*, CCH 1971 Trade Cases, p. 89,823, ¶73,441 (D. Colo., Dec. 21, 1970) makes it obvious, as does Judge Waterman's dissent in *Billy Baxter* v. *Coca-Cola Co.*, 431 F.2d 183, 189-196, 197 (2d Cir., 1970), *in which a petition for certiorari awaits decision by this Court*, that the principles by which standing is to be determined in antitrust cases are not at all clear, well settled or even reconcilable with decisions of this Court. In *Wilson*, the Court sustained an employee's standing to use for treble damages, by reason of a reduction of compensation alleged to have been caused by defendant's violation of the Sherman Act. In referring to the numerous precedents regarding standing in antitrust cases, the Chief District Judge said:

> "We must confess at the outset that we find antitrust standing cases more than a little confusing and certainly beyond our powers of reconciliation." (CCH 1971 Trade Cases, p. 89,824)

In *Wilson*, the Court also questioned whether "direct injury" or "target area" were proper restrictions to be imposed by Courts in construing Section 4 of the Clayton Act, 15 U.S.C. §15, and concluded:

> "The best evidence of what Congress intended ought to be the language of [15 U.S.C.] section 15 itself, and, as we have already noted, that section does not contain either a 'direct injury' or a 'target area' limitation upon standing. In addition, the Supreme Court's holding in *Radovich v. National Football League*, 352 U.S. 445 (1957), indicates that we should take an unrestrictive view of section 15." (CCH 1971 Trade Cases, p. 89,826)

After the quotation from *Radovich* (352 U.S., pp. 452-53), which also appears at pp. 18-19 of Fields' petition, the Court said:

> "This paragraph suggests to us that the Supreme Court would not take a restrictive view of [15 U.S.C.] section 15, and we do not believe that the tenth circuit court of appeals would do so on the facts of this case." (CCH 1971 Trade Cases, p. 89,826)

Thus, there can be no doubt that a sharp conflict exists between the Second and the Ninth and other Circuits and between the Second Circuit and this Court on the proper construction of Section 4 of the Clayton Act, 15 U.S.C. §15, as it affects standing to sue in any given antitrust case. It is respectfully submitted that the wide diversity of opinion and doubt that exists in all circuits requires resolution now by this Court. Such resolution will expedite and facilitate the proper course of pending and future litigation on the question of standing as it affects litigants in many

fields of commerce beyond, as well as in, the motion picture business.

Respectfully submitted,

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